

COVERT OPERATIONS

Policy

Introduction

The use of covert operations (c/o) in wildlife law enforcement is well documented. The New Mexico Department of Game and Fish (DGF) recognizes the legality, the potential, and the applicability of this technique. This policy will guide the DGF in the selection of the c/o techniques when suspects or illegal activities are identified. This policy is influenced by, but not identical to, that followed by the Law Enforcement Division of the U.S. Fish and Wildlife Service. That is a tried and tested procedure appropriate to the business of wildlife protection. This policy is intended as a guideline to the minimum standards necessary for conducting a covert project. In all cases, legal requirements, ethical standards, and safety of the personnel shall rule the day.

A distinction is now made between plainclothes (p/c) operations and c/o activities. For purposes of this policy, p/c operations are those in which the participating officer(s) are not readily identifiable as law enforcement personnel. Upon gaining knowledge and/or evidence of violation, the p/c officer identifies him/herself and makes the arrest. These operations are otherwise covered by existing policy. On the other hand, c/o operations are those in which the operatives conceal their official identity throughout the operation in order to gain intelligence or evidence.

Classes of Covert Operations

Classes of covert operations are determined by an analysis of numerous risk factors regarding the operation. These factors may include, but are not limited to:

1. danger to the operative;
2. socioeconomic, sociopolitical status of the suspect;
3. interaction with other jurisdictions or agencies;
4. compromise of privileged relationships; and/or
5. risk of arrest of the officer.

<u>CLASS</u>	<u>DANGER</u>	<u>SOCIAL</u>	<u>OTHERS</u>	<u>PRIVIL</u>	<u>ARREST</u>
I	hi	hi	out st.	hi	felony
II	med	med	in state	lo	misd
III	norm	med	in state	zero	DGF

The class of a proposed c/o may not be readily apparent in the conceptual stage of the project. It will be determined during the review/approval process, and may even vary up and down the scale during the operation. The general guideline is that as the potential for one of the analysis factors to be of concern increases, the higher will be the class of the c/o, and the higher will be the level of authority required for approval and for ongoing review of the case. The class of a c/o shall be the highest single class perceived in the analysis of the various factors. For example, if a proposed operation presents normal danger to the operative, the suspect is of normal standing in the community, the risk of compromise of privileged communications is nil, the likelihood of the operative to be involved in criminal activity is low, but the operation involves agents/officers of another jurisdiction, it shall be a Class I operation.

Funding of Covert Operations

All funds used for covert operations shall be encumbered from budgeted line items in the Game Protection Fund. They shall be managed and accounted for as provided in this and related written covert funds procedures (“Accounting Procedures for Covert Checking Account” and “Accounting Procedures for Covert ‘buy Money’ Funds”). In all cases, state statutes and procedures regarding financial, contractual, and other fiscal matters shall govern, and all financial records shall be audited by the department’s Administrative Services Division upon termination of a project.

Approval of Covert Operations

Operations may be approved depending on the c/o class and the funding required. In any case, a written justification must be submitted by the officer who perceives the need for a covert project. This written request should include the name, location, and description of the target (s), the reason for the suspicion of the suspect activity, any documentation in support of the suspicion (OGT reports, case files, public complaints, etc.), some estimate of time/funding/equipment required, and any suggested procedures or scenarios which may be effective to approach the target. Reviewers must be able to discern the justification for the project, the objective of the operation, and estimate the time and cost involved from this written request. In the case of a complex project, the requesting officer(s) and review personnel will probably work together throughout development stages and will prepare appropriate documents accordingly. Minimum review personnel shall include requesting officer’s assistant area supervisor, assistant chief of field operations, and chief of field operations. Each level shall provide his/her recommendation to their supervisor.

No covert operation may be initiated without written approval. Approval may be granted only as follow:

<u>AUTHORITY</u>	<u>MAX. CLASS</u>	<u>MAX. EXP. COVERT FUNDS</u>	<u>MAX. TIME</u>
Chief LE	III	\$1,000.00	90 days
Asst. Dir.	II	\$1,500.00	180 days
Director	I	>\$1,500.00	>180 days

A c/o may not continue longer than required to achieve the objective of the project. AUTHORIZATION AUTOMATICALLY EXPIRES AFTER EIGHTEEN MONTHS OF OPERATION. An ongoing project may be continued ONLY if request for continuation has been submitted by the project manager. Upon termination of an operation for whatever cause, closure shall be documented. This report shall describe the date of and reason for termination. If it will not compromise prosecution or other efforts, the closure document should also include the results of the operation, a synopsis of activities, a brief review of expenses incurred, and any other pertinent data. In any case, a comprehensive closure is to be developed as soon as other actions will not be compromised.

Assignment of Personnel

A c/o project is labor intensive. Personnel will be assigned as operatives, case officers, and project manager by the approving authority. These "titles" and their responsibilities may be combined or further distributed as appropriate to the project.

Operatives may be uniformed officers temporarily assigned away from their station, p/c officers, officers from another jurisdiction, or persons under professional services contracts. The operative is responsible for infiltration or involvement with the target. He/she will report activities as required to the case officer.

The case officer will usually be the assistant area supervisor. He/she is the "control" and is responsible for supervising the operative, maintaining the case file, liaison with the prosecutor, and liaison with and reporting to the project manager.

The project manager will usually be the assistant chief of law enforcement. This officer is responsible for all project funds, contract documents, equipment assigned to the operative, etc., all of which are to be maintained in a project management file. This file will also contain the original request, the approvals, personnel assignments, and periodically updated case reports from the case officer. This file should provide the opportunity to review all financial aspects of the operation current to the last day of the preceding month and all investigative aspects of the case current to the last day of the second preceding month.

The project manager will arrange for completion of an internal audit of project funds, expenditures, and equipment upon termination of the project. Such audit shall be timed so as not to compromise success of the project nor safety of the personnel.

Preparation of Covert Operations Personnel

Insofar as possible, Department personnel assigned as case officers or higher shall be trained in the conduct and supervision of covert operations. It is recommended that they attend either or both the “Covert Wildlife Investigation Program: or the “Special Investigative Techniques and Undercover Operations Seminar” offered by the USFWS at the Federal Law Enforcement Training Center in Glynco, Georgia. The training and recruiting Division of NMDPS also offers training courses in undercover operations from time to time. These, as well as other training courses available from private training organizations, should be utilized as appropriate.

Operatives are to be briefed at the beginning and periodically throughout the project as to the carrying of weapons, case law regarding entrapment, requirements for documentation of activities, methods of contact with case officer(s), fall-back positions, etc.

If the operative is not a peace officer, he/she shall be cautioned that the carrying of a concealed weapon is a criminal offense and that he/she shall do so at their own peril.

The planning stages of a covert project will include consideration of the potential for the operative to be involved with illegal activity. If such a potential exists, project management shall include contingencies for minimizing that activity and shall include the following:

1. Violation of wildlife protection statutes/regulations shall be authorized only if absolutely necessary and if the prosecuting attorney has been previously notified.
2. Involvement in other criminal misdemeanors shall be tolerated only in emergency circumstances. Such involvement shall be reported to the case officer as soon as practicable after the incident.
3. Involvement in violent crime is intolerable. The operative shall make every effort to discourage such conduct, shall report such potential to the case officer, and shall disengage from the target prior to any such activity.

If the operative is not a regular Department employee, all equipment issued to him/her shall be listed by date, description, to whom, and by whom issued. This equipment inventory shall be kept in the project management file and shall be audited with the financial records upon termination of the project. All state-owned equipment shall be returned to the appropriate officer upon termination of the contract. If the operative is a department employee, equipment transfers shall be documented in the usual manner.

Operatives will be provided with appropriate aliases, cover documentation such as alias driver's license, gasoline credit cards, stationery, calling cards, etc. Issuance of these materials is to be documented as with other equipment, and remaining materials are to be turned in to the case officer and/or project manager upon termination of the project. Department employees assigned as covert operatives or p/c officers, will be allowed to keep their alias documentation so long as actively assigned but shall tender same to the chief of field operations upon their reassignment to other duties.

Ongoing Review

As described above, the case officer is responsible for supervision of the operative and liaison with the project manager. At least once per month, the case officer will personally brief the project manager on status and concurrently submit the requisite documentation for the project management file. Likewise, the project manager will monthly update the project management file. He/she will subsequently brief the chief of field operations or the approving authority as to the project status, including but not limited to :

1. monthly expenditures and financial balance;
2. review of operatives' activities in whatever detail is appropriate;
3. number, type, degree of criminal cases developed;
4. problems perceived or encountered; and/or
5. proposed/planned activities for the following month.

Any findings of non-compliance with policy, law, or other responsibility shall be immediately reported to and shall be cause for immediate review of the complete project by the director. The director's decision upon review shall cause immediate compliance and shall be final.